

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

BERRY MORROW  
ADC #143825

PLAINTIFF

V.

NO: 5:14CV00285 JM/PSH

SHELIA MATTHEWS *et al*

DEFENDANTS

**PROPOSED FINDINGS AND RECOMMENDATION**

**INSTRUCTIONS**

The following Proposed Findings and Recommendation have been sent to United States District Judge James M. Moody Jr. You may file written objections to all or part of this Recommendation. If you do so, those objections must: (1) specifically explain the factual and/or legal basis for your objection; and (2) be received by the Clerk of this Court within fourteen (14) days of this Recommendation. By not objecting, you may waive the right to appeal questions of fact.

**DISPOSITION**

Plaintiff Berry Morrow, an inmate who is currently incarcerated at the Arkansas Department of Correction's Tucker Maximum Security Unit, filed a *pro se* complaint, pursuant to 42 U.S.C. § 1983, on July 23, 2014. On March 10, 2015, the Court entered an order scheduling this case for a pre-jury evidentiary hearing on November 2, 2015 (docket entry 26). That same order also directed plaintiff to file a notice of his intent to continue with the case, along with a statement of facts and a list of any proposed witnesses, no later than April 10, 2015, and warned him that his failure to comply could result in the dismissal of his complaint. Plaintiff failed to comply, and, on August 26,

2015, the Court entered an order directing plaintiff to file a response within 14 days, and warning him that his failure to do so could result in the recommended dismissal of his complaint (docket entry 36). More than 14 days have passed, and plaintiff has not responded. Under these circumstances, the Court concludes that plaintiff's complaint should be dismissed without prejudice for failure to comply with Local Rule 5.5(c)(2), and failure to respond to the Court's order. *See Miller v. Benson*, 51 F.3d 166, 168 (8th Cir. 1995) (District courts have inherent power to dismiss *sua sponte* a case for failure to prosecute, and exercise of that power is reviewed for abuse of discretion). In light of this recommendation, all pending motions should be denied as moot.

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's complaint be DISMISSED WITHOUT PREJUDICE for failure to comply with Local Rule 5.5(c)(2), and failure to respond to the Court's order.
2. The Court certify that an *in forma pauperis* appeal taken from the order and judgment dismissing this action is considered frivolous and not in good faith.
3. All pending motions be DENIED AS MOOT.

DATED this 22nd day of September, 2015.

  
UNITED STATES MAGISTRATE JUDGE